

## REMARKS

Claims 1-17 and 22-40 are pending in the application with claims 1, 8, 13, 14, 22-24, and 27 being the independent claims. Claims 1, 22, and 23 are amended. Claims 28-40 are newly added. Support for these claim amendments and new claims can be found in the specification, claims, and drawings as originally filed. Applicant traverses the rejections.

### Office Action Dated April 11, 2007

The Office Action dated April 11, 2007 appears to not reflect the most recent claim amendments made in Applicants' paper filed March 26, 2007. In that response, Applicants rewrote claims 8, 13, and 14 in independent form to include the features of their base claim. In a telephone conversation with the Examiner on June 25, 2007, the Examiner explained that the paper filed March 26, 2007 was entered, that amendments to claims 8, and 13, and 14 should have placed them in a condition for allowance, and that the rejections of independent claims 1, 22, and 23 were maintained despite the amendments. Accordingly, this paper responds to the Office Action as clarified by the telephone conversation.

### Allowed and Allowable Claims

Applicants acknowledge the indication that claims 24-27 are allowed. The Office Action indicates that claims 8 and 13-17 are allowable. Per the telephone conversation discussed above, Applicants understand that claims 8 and 13-17 should also be allowed.

### New Claims

This paper add new claims 28-40. Each of these claims depends from one of claims 8, 13, and 14. Accordingly, Applicants respectfully submit that these dependent claims also are in condition for allowance.

### Compliance with 35 U.S.C. §102

The Office Action indicated that claims 1-7, 11, 22, and 23 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,556,431 to Buttner-Janz et al. ("Buttner-Janz").

Independent Claim 1

By this paper, claim 1 is amended to further define the first and second flanges recited in claim 1. Support for the claim amendments can be found, among other places, in Paras. [0094]-[0096] and Figs. 4A-4C, 5, and 6.

Claim 1 is directed to a prosthetic device for lateral insertion. In particular, claim 1 recites:

A prosthetic device for lateral insertion into an intervertebral space, comprising

a first component having a first laterally-extending flange configured to advance into a laterally extending preformed opening in a first vertebra from a lateral approach, the first flange extending from a first bearing surface offset from a first center point of the first bearing surface, the first flange including a portion adjacent the bearing surface and a top-most portion spaced from the bearing surface, the top-most portion laterally extending along a substantial portion of the first flange, the first component having a first articular surface opposite the first bearing surface, and

a second component having a second laterally-extending flange for engaging a second vertebra from a lateral approach, the second flange extending from a second bearing surface offset from a second center point of the second bearing surface, the second flange including a portion adjacent the bearing surface and a bottom-most portion spaced from the bearing surface, the bottom-most portion laterally extending along a substantial portion of the second flange, the second component having a second articular surface opposite the second bearing surface for cooperating with the first articular surface to permit articulating motion between the first and second components.

Buttner-Janz does not anticipate claim 1 because it fails to disclose all the features recited in claim 1. For example, Buttner-Janz fails to disclose a prosthetic device with all the recited

features, including a flange portion having a “top-most portion spaced from the bearing surface, the top-most portion laterally extending along a substantial portion of the first flange” and “a bottom-most portion spaced from the bearing surface, the bottom-most portion laterally extending along a substantial portion of the second flange.”

Buttner-Janz discloses teeth 7. These teeth are different than the flanges in claim 1 because the teeth do not include a “top-most portion laterally extending along a substantial portion of the first flange” and a “bottom-most portion laterally extending along a substantial portion of the second flange.”

Because the cited prior art reference fails to disclose all the features of claim 1, Applicants submit that claim 1 should be in condition for allowance. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Independent Claim 22

By this paper, claim 22 is amended to further define the first and second flanges recited in claim 22. Support for the claim amendments can be found, among other places, in Paras. [0094]-[0096] and Figs. 4A-4C, 5, and 6.

Claim 22 is directed to a prosthetic device for lateral insertion. In particular, claim 22 recites:

A prosthetic device for insertion into an intervertebral space defined between a pair of spondylosed vertebrae, comprising:  
a first component, comprising:  
    a first flange laterally extending along a first bearing surface, the first flange including a first portion adjacent the bearing surface and a second portion spaced from the bearing surface, the second portion laterally extending along a substantial portion of the first flange; and  
    a projection extending from a first articular surface; and  
a second component adapted to be engaged with the first component, comprising:  
    a second flange laterally extending along a second bearing surface, the second flange including a first portion adjacent the

bearing surface and a second portion spaced from the bearing surface, the second portion laterally extending along a substantial portion of the second flange, the second flange being offset from the first flange and the second bearing surface being substantially parallel to the first bearing surface during engagement of the second component with the first component, thereby accommodating a spondylosed relationship between a first vertebra and a second vertebra; and

a recess formed in the second articular surface;  
wherein the projection and the recess engage one another to provide for articulating motion between the first and second components.

Buttner-Janz does not anticipate claim 22 because it fails to disclose all the features recited in claim 22. For example, Buttner-Janz fails to disclose a prosthetic device with all the recited features, including a first flange having a “second portion spaced from the bearing surface, the second portion laterally extending along a substantial portion of the first flange” and having a second flange including “a second portion spaced from the bearing surface, the second portion laterally extending along a substantial portion of the second flange.”

Buttner-Janz discloses teeth 7. These are different than the flanges in claim 22 because they do not include the claimed features. More specifically, the teeth in Buttner-Janz do not include a “second portion spaced from the bearing surface, the second portion laterally extending along a substantial portion of the . . . flange.” Therefore, claim 22 is not anticipated by Buttner-Janz.

Because the cited prior art reference fails to disclose all the features of claim 22, Applicants submit that claim 22 should be in condition for allowance. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

#### Independent Claim 23

By this paper, claim 23 is amended to further define the flange. Support for the claim amendment can be found, among other places, in Paras. [0094]-[0096] and Figs. 4A-4C, 5, and 6. Claim 23 is directed to a prosthetic component. In particular, claim 23 recites:

A prosthetic component for forming a portion of a prosthetic device, comprising a first surface having a flange configured to advance into a laterally extending preformed opening in a vertebra from a lateral approach, the flange including a first portion adjacent the first surface and a second portion spaced from the first surface, the second portion laterally extending along a substantial portion of the flange, the flange being offset from a center point of the first surface, and a second surface in an opposed relation to the first surface, the second surface being adapted to engage another prosthetic component.

Buttner-Janz does not anticipate claim 23 because it fails to disclose all the recited features. For example, Buttner-Janz fails to disclose a prosthetic device with all the recited features, including a flange with “a first portion adjacent the first surface and a second portion spaced from the first surface, the second portion laterally extending along a substantial portion of the flange.”

Buttner-Janz discloses teeth 7. These are different than the flange in claim 23 because they do not include the claimed features. More specifically, the teeth in Buttner-Janz do not include a “second portion spaced from the first surface, the second portion laterally extending along a substantial portion of the flange.” Therefore, claim 23 is not anticipated by Buttner-Janz.

Because the cited prior art reference fails to disclose all the features of claim 23, Applicants submit that claim 23 should be in condition for allowance. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Dependent Claims 2-7 and 9-12

Claims 2-7 and 9-12 depend from and add additional features to independent claim 1. Therefore, these claims should be allowable for at least the reasons that independent claim 1 should be allowable. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection and allow these claims.

Conclusion

For at least the reasons set forth above, Applicant submits that the pending claims 1-17 and 22-40 are in condition for allowance. Accordingly, Applicant respectfully requests that the Examiner withdraw the outstanding rejections and issue a formal notice of allowance.

The Office Action and prior Office Actions contain characterizations of the claims and the related art to which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

Please grant any extension of time required to enter this response and charge any additional required fees, including claim fees, to our Deposit Account No. 08-1394.

Respectfully submitted,



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I hereby certify that this correspondence is being filed with the U.S. Patent and Trademark Office via EFS-Web on July 3, 2007.

  
Pat McHan